

# Orange Pear

## General terms & conditions June 2016

Orange Pear b.v.

### Article 1 - Definitions

For the following words in these General Terms and Conditions and in the Agreements the following definitions apply:

- a) "Real Estate Manager": an organization whose primary activities consist of providing real estate management services for third parties on a commercial basis and which has indicated during the Registration that it complies with these requirements;
- b) "Confidential Information": confidential information concerning the Customer or Supplier, including (a) information which is designated in writing as 'confidential', (b) information which is not generally known, (c) information which is not made generally accessible by the party to which the information relates and/or from which the information comes, and (d) information which must be presumed to be confidential;
- c) "Customer": a natural person or legal entity who/which has completed the Registration and has entered into an Orange Pear Agreement with the Supplier;
- d) "Defect": all failures in the Web Application which substantially interfere with the operation thereof, as described in the accompanying Documentation. The lack of functionality in a new version of the Web Application which was present in an earlier version shall not be considered a Defect;
- e) "Documentation": the electronic documentation accompanying the Web Application;
- f) "Employee": an employee of the Customer or Supplier and/or a natural person or legal entity authorized to perform work for or under the responsibility of the Customer or Supplier;
- g) "Orange Pear Agreement": the agreement between the Supplier and Customer regarding the Orange Pear Services;
- h) "Orange Pear Partner": a third party to be designated by Orange Pear which is authorized to sell Orange Pear Services based on terms and conditions determined by Orange Pear;
- i) "Orange Pear Portal": the Supplier's website where Users can get access to the Web Application by means of Log-In Data;
- j) "Orange Pear Service(s)": all of the services to be provided by the Supplier, as described further in the Orange Pear Agreement;
- k) "Orange Pear Terms and Conditions": these Orange Pear Terms and Conditions;
- l) "Additional Tenants": the addition of extra tenants under an Orange Pear Agreement that are managed through the Orange Pear Portal after the Orange Pear Agreement has commenced;
- m) "Log-In Data": code(s) intended exclusively for the User, with which access may be obtained to the Web Application via the Orange Pear Portal;
- n) "Log-In Procedure": the procedure required by the Supplier which the Customer must follow to gain access to the Web Application on the Orange Pear Portal;
- o) "Month": a period of 1 calendar month, e.g. from 5 February until 5 March;
- p) "Year": a period of 1 calendar year, e.g. from 5 February 2015 until 5 February 2016;
- q) "Registration": the completing of a form by electronic means through the Website by which the data of a future Customer is recorded;
- r) "Supplier": Orange Pear B.V. or one of its subsidiaries acting as a supplier;
- s) "System Requirements": the minimum requirements set for the Customer's hardware and software for the proper use of the Orange Pear Services;
- t) "User": the Customer and/or an Employee of the Customer;
- u) "Web Application": the software described in the Orange Pear Agreement, to which the Supplier provides the Customer access through the Orange Pear Services, for use in accordance with the provisions of the Orange Pear Agreement;
- v) "Website": the Supplier's website for Orange Pear;
- w) "Work Days": Monday through Friday, with the exception of official public holidays days;
- x) "Ultimate Beneficial Owner": entity that enjoys the possession and/or benefits of ownership (such as receipt of income) of a real estate object even though its ownership (title) is in the name of another entity (called a 'nominee' or 'registered owner');
- y) "Object Owner": the registered owner of a real estate object;
- z) "Portfolio": a collection of real estate objects owned by one Ultimate Beneficial Owner managed by a Client or a Real Estate Manager;
- aa) "Tenant": entity that rents a (part of) a real estate object from an Object Owner and is managed through the Orange Pear Portal.

### Article 2 - Offer and agreement

21 Unless parties have expressly agreed otherwise, these Orange Pear Terms and Conditions apply to the Orange Pear Agreement -including Additional Tenants- and to all negotiations, offers and other agreements with the Supplier relating to Orange Pear Services.

22 The Supplier is entitled to modify the Orange Pear Terms and Conditions unilaterally. Supplier will inform the Customer of the proposed changes through the Orange Pear Portal two (2) months before the changes take effect. If the Customer does not agree with the proposed changes, the Customer may, in deviation from the provisions in Article 5.2, terminate the Orange Pear Agreement, as per the date on which the changes take effect.

If the Customer does not, before the announced changes take effect, expressly object to the announced changes through the Web Application within 15 days after receiving notice from the Supplier, the Customer is deemed to have agreed to the changes.

23 All offers or quotations regarding the Orange Pear Services are free of obligations and are revocable.

24 The Customer may place an order directly through the Website and/or through the Web Application after he has obtained access to the Web Application. The Supplier will provide electronic confirmation of the order placed by the Customer resulting in the Orange Pear Agreement.

25 In the situation referred to under Article 24, the Supplier is free to not accept or not confirm the order placed by the Customer, without having to state any reasons, as a result of which an Orange Pear Agreement will not be concluded.

### Article 3 - Right of use

31 The Supplier hereby grants the Customer the non-exclusive right to use the Web Application for the Customer's (internal business) operations during the term of the Orange Pear Agreement, for the number of Users, Portfolio's and Tenants included in the Orange Pear Agreement. The right of use also includes the right to use the Documentation accompanying the Web Application.

32 The right of use commences at the moment the Orange Pear Agreement is concluded.

33 The Customer shall solely use the Web Application and Orange Pear Portal in accordance with the provisions in these Orange Pear Terms and Conditions.

34 The Supplier is entitled to make improvements to the Web Application as it sees fit. The Supplier will timely inform the Customer of the processing of updates and/or upgrades insofar as these are relevant for the use of the Web Application, all to the discretion of the Supplier.

### Article 4 - Scope of the right of use

41 The Customer may not allow the Web Application to be used by and/or for the benefit of any other person or legal entity besides the Customer and its Employees.

42 The Customer shall expressly not be permitted to use the Web Application for or have it used by more Users and/ or Portfolio's and/or Tenants than agreed upon in the Orange Pear Agreement.

43 The Customer is prohibited from transferring rights or obligations ensuing from the Orange Pear Agreement or Orange Pear Terms and Conditions to third parties.

### Article 5 - Term and termination of the agreement

51 The Orange Pear Agreement commences when the conditions in article 24 of these Orange Pear Terms and Conditions are fulfilled and is entered into for a period of one (1) Year, unless the parties have expressly agreed otherwise in the Orange Pear Agreement.

52 After the term referred to in Article 51 expires, also including a different term that was explicitly agreed upon, the Orange Pear Agreement will be tacitly renewed each time for a subsequent period of one (1) Year. The Orange Pear Agreement can be terminated by parties through the Web Application taking into account a notice period of (1) Month, which notice period starts on the first day of the term following the term during which the notice was received.

53 Supplier is entitled to terminate the Orange Pear Agreement with immediate effect if the Customer notifies the Supplier that it is no longer able to meet its payment obligations, or when the Supplier must conclude from the circumstances that the Customer is no longer able to meet its payment obligations, or when the (the company of) Customer ceases its activities. The Orange Pear Agreement will terminate by operation of law and with immediate effect if the (company of the) Customer goes into liquidation, is granted a suspension of payments or is declared bankrupt.

54 If Customer fails to (timely) meet its obligations, the Supplier has the right to suspend its duties and to block the access of the Customer to the Orange Pear Services. Furthermore, in such an event the Supplier is allowed to electronically dissolve the Orange Pear Agreement without judicial intervention if the other party, after having been served the appropriate electronic notice of default, still fails to meet its obligations under the Orange Pear Agreement.

55 The Supplier is in no event obliged to pay any damages as a result of a termination as described in Articles 5.2, 5.3 or 5.4.

56 Upon termination of the Orange Pear Agreement, the Customer will be denied access to the Web Application and his data. The Supplier will not reimburse any compensation to the Customer if the Orange Pear Agreement is terminated, regardless of the reason.

57 The term of the Orange Pear Agreement will not be changed as a result of adding Additional Tenants by the Customer.

### Article 6 - Price and payment

61 All prices and other tariffs applied by the Supplier are exclusive of VAT and exclusive of other government levies, payable by the Customer.

62 Supplier is entitled to adjust the fee mentioned in article 7 on a monthly basis. Following such an adjustment, the Customer is entitled to terminate the Orange Pear Agreement through the Web Application as per the next possible date as determined in article 5.2 of these Orange Pear Terms and Conditions.

63 The fee (meaning the monthly or yearly fee) will be paid solely in advance (with the exception of the payment of the first fee at the start of the Orange Pear Agreement), for which the Customer must provide the proper authorization, unless explicitly agreed otherwise.

Additional Tenants added by the Customer during the term of the Orange Pear Agreement will be invoiced pro rata from the moment the Additional Tenant is actually processed.

Any other fees (eg for consultancy, scans and/or training) concerning the Orange Pear Agreement will, as far as possible, be automatically collected through direct debit. As a result there is a possibility that in some cases the Customer will have to pay a final amount even after the termination of the Orange Pear Agreement. In as far as collection through direct debit is impossible, the invoiced amount has to be paid within 14 days of the invoice date.

64 Direct debiting will occur monthly or yearly as determined in the Orange Pear Agreement.

65. If the Customer revokes the direct debit authorization without a valid reason, or if the direct debit cannot be executed for other reasons not attributable to the Supplier, the Supplier will inform the Customer thereof and can block the access to the Web Application.

66 Access to the Web Application which has been blocked in accordance with Article 6.5 may be reactivated at the Customer's request within three (3) months against payment of the outstanding fees, plus an additional fee in accordance with article 6.7 and 6.8.

6.7 If the Customer fails to meet its payment obligations under this article 6, or fails to do so in a timely manner, the Customer is in default, without any further notice of default being required. Once in default the Customer must pay interest of 8.05% per year or part thereof, commencing on the date the payment was due. Supplier is entitled to block access to the Web Application in the aforementioned case.

6.8 All (extra)judicial costs including attorney fees, incurred by the Supplier, as a result of the Customer not meeting its payment obligations will be at the expense of the Customer. The extrajudicial (collection) costs incurred by the Supplier will be set at a minimum of 15% of the principal amount of the claim.

6.9 Next to the provisions stipulated in Articles 6 and 7, the Supplier is entitled to require immediate payment in advance from the Customer, in the situations referred to in Article 5.4 until the expiration of the intended term of the Orange Pear Agreement. This total fee will be immediately due and payable.

6.10 Article 6.9 applies by analogy if the Customer fails to pay after the Supplier has followed the procedure described in Article 6.5.

#### Article 7 - Fee

7.1 Pursuant to the Orange Pear Agreement, the Customer must pay a monthly or a yearly fee, with the exception for consultancy services which will be invoiced separately. This fee is determined in the Orange Pear Agreement. The fee must be paid to the Supplier.

7.2 The fee shall be payable, irrespective of whether the Customer uses the Orange Pear Services, from the moment the Orange Pear Agreement has commenced in accordance with article 2.4.

#### Article 8 - Supplier's obligations

8.1 The Supplier guarantees that on a regular basis (at least once a day) a snapshot (copy) of the data in the Web Application shall be created. This copy is solely created for internal security reasons of the Supplier (e.g. in case of calamities). This copy will not be distributed to Customer.

8.2 The Supplier hereby warrants that the data which the Customer has entered via the Web Application will be protected as much as reasonably possible against loss, theft, unauthorized access and alteration by non-Users.

8.3 Subject to the provisions in Article 12.6 and 25, the Supplier will not look into the data which the Customer has placed with the Supplier through the Web Application, and will not make data directly available to third parties (with the exception of subsidiaries of Supplier), unless Supplier must do so pursuant to statute, a regulation, a judicial order or an order by a government agency.

#### Article 9 - Obligations and assistance customer

9.1 The Customer must have a bankaccount at a (international) bank registered at the local central bank.

9.2 The Customer must immediately inform the Supplier of a change in address-and/or payment information through the Web Application.

9.3 The Customer must comply with the rules of use stipulated in Article 11.

9.4 If the Customer does not fulfill its obligations ensuing from the Orange Pear Agreement and/or the Orange Pear Terms and Conditions, the Supplier will be entitled to limit and/or block the Customer's access to the Web Application without prior notice, in accordance with Article 6.5.

9.5 The Customer is responsible for the operation of its hardware, software, configuration, peripheral equipment and internet connections necessary to use the Orange Pear Services.

9.6 The Customer hereby warrants that the equipment and software used by it for the Orange Pear Services meet the System Requirements. The Customer is responsible for taking the necessary measures to protect its equipment, software, and telecommunication and internet connections against viruses, cybercrime and unlawful use by third parties.

9.7 The Customer will provide all information and assistance to the Supplier, including providing the Supplier with correct and up-to-date name and address details, which the Supplier needs for the continuation of the Orange Pear Services.

#### Article 10 - Data

10.1 The Customer will at all times remain the proprietor of the data it has entered.

10.2 The Supplier is in no event liable for the costs of (reproducing) mutilated or lost data, nor for (consequential) damage or loss of profit on the part of the Customer.

10.3 Up to three (3) months after the termination of the Orange Pear Agreement, the Customer may ask the Supplier to reactivate the Orange Pear Agreement as per the moment the first payment of the fee with regard to the reactivation is received. After the reactivation the Customer will again have access to his data, as it was recorded in the snapshot copy taken at the moment of the termination as described in article 8.1.

10.4 The Supplier is not obliged to comply with the request referred to in Article 10.3 if the corresponding payment is not received.

10.5 The Customer must ensure that the applicable statutory retention periods are complied with properly. The Supplier will not be subject to any statutory retention period regarding data entered by the Customer.

#### Article 11 - Rules of use

11.1 The Customer shall not in any manner whatsoever cause inconvenience or damage to the Supplier (or its customers) in using the Orange Pear Services. The Customer is not allowed to perform actions which can be assumed to cause possible damage to the Supplier's (or its customers) systems.

11.2 The Customer is not allowed to use the Orange Pear Services contrary to statutory provisions or the Orange Pear Terms and Conditions.

11.3 The Supplier is not responsible for the content and accuracy of the data which the Customer has placed with the Supplier through the Web Application.

11.4 The Customer hereby undertakes vis à vis the Supplier to use the Orange Pear Services in such a manner that the amount of information stored by it and the volume of data transport realized by it does not significantly differ from the average use of the Orange Pear Services by other Customers of the Supplier. If, in the Supplier's judgment such use by the Customer significantly differs from the average use, the Supplier will contact the Customer in order to agree on specific terms and conditions with the Customer for the additional use. If the parties cannot agree on these specific terms and conditions, the Supplier will be entitled to limit the Customer's use of the Web Application after prior notice.

#### Article 12 - Support

12.1 The Customer is entitled to support for the duration of the Orange Pear Agreement.

12.2 Support includes the right to consult Documentation. In addition, questions may be submitted 24 hours a day through Web Application. Subject to Article 12.5, the Customer is also entitled to telephone support during business hours (on Work Days, from 08:30 to 17:30 UTC+1). The support concerns the use and functionality of the Orange Pear Services.

12.3 Support does not include:

- a) services regarding system configurations, hardware networks;
- b) structural work such as defining layouts, overviews, annual reports, the lay-out of charts, import definitions or connections third-party software;
- c) on-site support;
- d) extensions to the Web Applications functionality at Customer's request;
- e) file conversions and/or returning/importing back up
- f) services with respect to external databases of other producers than the Supplier;
- g) configuration, training or other services not expressly described in the Orange Pear Agreement;
- h) support for operating- and other software from other producers besides the Supplier, including third-party software which can be started up from the Web Application;
- i) file repairs the cause of which cannot be attributed to the Web Application;
- j) the issuing of newly available products;
- k) support for Internet connections;
- l) support in an environment which is not supported according to the System Requirements.

12.4 Only a User can request support.

12.5 Before contacting the Supplier by telephone for support, the User must first consult the applicable Documentation and/or submit questions through the Web Application.

12.6 In providing support, the Supplier will be entitled to look at the Customer's data referred to in Article 10.

12.7 If, at the Customer's request, the Supplier provides services in respect of the matters mentioned under 12.3 a) through l), the Supplier will, in addition to the fee referred to in Article 7, separately charge the Customer for these services in accordance with the then current prices in effect at the Supplier and the costs incurred.

#### Article 13 - Consultancy

13.1 In the event that the Customer wishes to purchase consultancy services in relation to the Orange Pear Agreement (e.g. for assistance during implementation), the Supplier shall, in consultation with the Customer, plan the delivery of the consultancy services and confirm the order, taking into account the desired planning as far as reasonably possible. The Supplier cannot guarantee to deliver in accordance with the planning desired by the Customer.

13.2 The Customer may cancel the requested consultancy services up to 3 (three) Working days before the (start) date, or ask the Supplier for a new (start) date. In the event that the Customer does not take the stated period of 3 (three) Working days into account for this purpose, the Supplier shall be entitled to invoice the Customer for the consultancy services that were rejected by the Customer on the original delivery date.

13.3 The Supplier shall make every effort to carry out the consultancy services within the periods agreed. All (delivery) periods stated by the Supplier have been determined to the best of its knowledge on the basis of the information that was known when the consultancy services

were confirmed. The Supplier shall not be in breach if a stated (delivery) period is exceeded.

13.4 Supplier shall invoice the Customer for the consultancy services after delivery of the consultancy services, which invoice needs to be paid in accordance with article 6.3.

13.5 When the Supplier deems fit, it is always entitled to replace the person that is effectively carrying out the consultancy services, also by (external) professionals.

13.6 The consultancy services are carried out on Working Days during normal office hours with a lunch time of thirty (30) minutes during the agreed upon term of the consultancy services.

13.7 The Customer shall be responsible for the computer system's compliance with the System Requirements. Should this not be the case when the consultancy services commence, the Supplier shall be entitled to invoice the consultancy days that it could not reasonably fulfill, due to the fact that the Customer's computer system does not meet the System Requirements or (at the Supplier's discretion) pass on the expenses that the Supplier incurred in order to get the computer system working in accordance with the System Requirements.

13.8 The Customer shall indemnify the Supplier against claims of third parties, including Employees, who suffer loss as a result of carrying out the consultancy services as a consequence of the Customer's actions or failure to do something or of unsafe situations in its organization.

## Article 14 – Availability

14.1 The Supplier will do its utmost to ensure optimal availability of and access to the Web Application.

14.2 The Supplier is entitled to block access to the Web Application or (temporarily) limit the use of the Web Application, without prior notice, insofar as this is necessary for the safety and/or protection of the Orange Pear Services and accompanying data (storage), as well as to take preventive measures for maintenance or to make adjustments or improvements to one or more Orange Pear Services. These measures do not entitle the Customer to compensation from the Supplier. The Supplier will do its utmost to keep these measures to a minimum and, if possible, to inform the Customer in a timely manner.

## Article 15 – Log-in procedure

15.1 The Customer is obliged to follow the Log-In Procedure.

15.2 The Supplier shall be entitled to adjust the Log-In Procedure as it sees fit. The Supplier shall inform the Customer thereof in a timely manner.

15.3 The Customer must treat the Log-In Data with due care and shall have the sole responsibility for it. The Log-In Data may not be transferred and may not be used outside the Customer's organization. The Users must treat the Log-In Data as absolutely confidential with respect to everyone. The Customer shall be liable for any and all use of its Log-In Data. The Customer shall be responsible for all actions by the Users in this regard.

## Article 16 – Use of the web application

16.1 The Supplier will provide the Customer with access to the Web Application by means of issuing the Log-In Data to entered in the Orange Pear Portal.

16.2 The Supplier is at all times entitled to limit or block the Customer's access to the Web Application for an indefinite period, without giving reasons, if the Supplier suspects misuse or other improper use.

16.3 The Customer guarantees that the Users will handle their access to the Web Application and the information thus obtained in a responsible manner, while the Customer retains and/or accepts unconditionally the ultimate responsibility for any information the Users add to or change in the Web Application.

16.4 The information that is made available via the Web Application, the Orange Pear Portal and/or the Website by or on behalf of the Supplier is provided without any guarantees unless stated otherwise, and the Customer or third parties cannot derive any rights from this information.

## Article 17 – Intellectual property rights

17.1 All copyrights, patent rights, trade name rights, trademark rights, other intellectual and industrial property rights as well as all similar rights for the protection of (information in respect of) the Web Application, Orange Pear Portal and Documentation are the exclusive property of the Supplier or its licensor(s). None of the provisions in the Orange Pear Agreement or Orange Pear Terms and Conditions can be interpreted in such a way that it results in the full or partial transfer of these rights to the Customer.

17.2 The Customer is prohibited from changing, removing or making unrecognizable any notice in respect of Supplier's intellectual property rights on or in the Web Application, Orange Pear Portal or Documentation. The Customer is prohibited from using or registering any of the Supplier's brands, designs or domain names or similar names or signs corresponding to these, anywhere in the world.

17.3 The Supplier indemnifies the Customer against any compensation and all costs and expenses which the Customer may be ordered to pay as a result of a third party legal claim for the infringement or assumed infringement of valid patents, copyrights, brands or other third-party rights as a result of use by the Customer, in accordance with the Orange Pear Agreement, the Orange Pear Terms and Conditions and Documentation, of the Web Application or any portion thereof, provided the Customer immediately electronically notifies in accordance with article 28.2 of these Orange Pear Terms and Conditions, the Supplier of such a legal claim when it is given notice of this, the Customer allows the Supplier to put forward defenses against the claims concerned and realises a settlement as it sees fit, and the Customer, at the Supplier's request, provides the Supplier with all relevant information.

17.4 If an injunction is imposed on the Customer, prohibiting the use of the Web Application because of an infringement as referred to in Article 17.3, or, in the Supplier's opinion, there is a chance that the Web Application will become the subject of a successful claim for infringement, the Supplier is, at its discretion and expense, entitled to: (I) obtain the right for the Customer to continue to use the Web Application as stated in these Orange Pear Terms and Conditions; (II) replace the Web Application or adjust it in such a way that it no longer constitutes an infringement, provided the functionality remains materially unchanged; or (III) if the prior options (I) and (II) are not reasonably feasible, terminate the Orange Pear Agreement and/or these Orange Pear Terms and Conditions, together with any rights to the infringing Web Application that were granted under the Orange Pear Agreement and/or these Orange Pear Terms and Conditions.

17.5 Without prejudice to the provisions in Article 17.3, the Supplier is not liable towards the Customer under this Article, insofar as a claim is based on: (I) use of the Web Application or Orange Pear Portal in conjunction with data, equipment or software that was not delivered by the Supplier, whereby the Web Application or Orange Pear Portal would, in itself, not constitute an infringement or otherwise be subject of the claim; (II) incorrect use of the Web Application or Orange Pear Portal or use in a manner not described in the Documentation; (III) an amendment to the Web Application or Orange Pear Portal implemented by a natural person or legal entity other than the Supplier; or (IV) the Supplier's compliance with strict instructions from the Customer. The Customer indemnifies and holds Supplier harmless against any and all claims as described in points (I) through (IV) of this Article.

17.6 The Customer hereby acknowledges and accepts that the Supplier's full and exclusive liability for infringements of patents, copyrights, brands or other intellectual property rights is laid down as the provisions in this Article 17 and in Article 18.

17.7 The Supplier is entitled to make and maintain technical provisions for the purpose of protecting (the intellectual property rights of) the Web Application, Orange Pear Portal and Documentation and with a view to enforcing the agreed restrictions in the use of the Web Application and/or Orange Pear Portal. The Customer is prohibited from circumventing or removing such technical provisions.

## Article 18 – Liability

18.1 Supplier, its Employees, representatives and/or (sub-)contractors and agents engaged for the fulfilment of the obligations of Supplier can only be held liable for direct damages to property and/or physical injury to persons resulting from an intentional act or omission, willful misconduct or gross negligence by Supplier, her employees, representatives and/or (sub-)contractors and agents. Unless statutory regulations exclude a limitation to the liability for damages resulting from an intentional act or omission, willful misconduct or gross negligence, the Supplier,

her employees, representatives and/or (sub-)contractors and agents are only liable for damages as described in the following paragraphs of this Article 18.

18.2 In the event of physical injury, irrespective of whether this injury results in death, the Supplier's liability is in any case limited to EUR 500,000 per damage causing incident. In the event of property damage, the Supplier's liability is in any case limited to EUR 50,000 per damage causing incident. In both cases, a series of related events shall be considered a single event.

18.3 The Supplier is never liable for indirect damage, included but not limited to: loss of profit, missed savings, reduced goodwill, damages resulting from operational stagnation, damage resulting from claims by the Customer's customers, corruption or loss of data, damage associated with the use of third-party items, materials or software prescribed to the Supplier by the Customer, damages associated with the deployment of suppliers prescribed to the Supplier by the Customer, or consequential losses, irrespective of the nature of the action (breach of contract, tort or otherwise), even if the Supplier was notified of the possibility of such damage.

18.4 The Supplier is never liable for any damage of whatever nature suffered by the Customer due to the fact that the Web Application and/or Orange Pear Portal is temporarily unavailable, or temporarily unavailable in its proper or complete form.

18.5 The Supplier is never liable for any damage of whatever nature suffered by the Customer in connection with the operation or non-operation of the Customer's or third parties' software, the Customer's, the Supplier's or third parties' equipment, or the Customer's, the Supplier's or third parties' internet connections.

18.6 The Supplier will not accept any liability for the fact that data placed with the Supplier via the Web Application is not sent or received in a proper, complete or timely manner.

18.7 Insofar as the Supplier cannot invoke the liability exclusions or limitations described in this Article, its liability at any time will be limited to 50% of all amounts invoiced to the Customer in the six (6) months preceding the Supplier's default, minus credits given to the Customer by the Supplier during that period. Insofar as the Supplier is also unable to invoke the limitation referred to in this Article 18.7, the Supplier's liability is in any case limited to EUR 10,000.

18.8 The Customer acknowledges and accepts that the fee for the Orange Pear Services has been determined with due observance of the liability limitation referred to in this Article.

18.9 The Customer acknowledges and accepts that the Web Application or Orange Pear Portal can never be perfect or 100% free of Defects and that not all Defects can or shall be remedied.

18.10 The Customer indemnifies the Supplier against third-party claims resulting from or relating to the Orange Pear Agreement or Orange Pear Terms and Conditions, unless the Customer is able to enforce these claims against the Supplier with due observance of the provisions in this Article, as if the Customer had suffered the damage itself.

18.11 Liability on the part of the Supplier with regard to attributable breaches of its obligations resulting from an agreement with the Customer will in all cases only exist if the Customer serves the Supplier with proper notice of default forthwith by electronic means in accordance with article 28.2 of these Orange Pear Terms and Conditions, whereby a reasonable period must be given to remedy the breach, and the Supplier remains in breach of its obligations even after that period. The notice of default must contain an as complete and detailed description of the breach as possible, allowing the Supplier to respond adequately.

18.12 Any right to compensation becomes void in any case if the Customer has neglected to take measures to (I) limit the damage immediately after it occurs; or (II) prevent any other or additional damage; or (III) if the Customer fails to notify the Supplier of the damage as soon as reasonably possible and provide it with all relevant information.

18.13 Any claim for compensation against the Supplier lapses by the mere lapse of a period of 4 months after the damage has manifested itself.

## Article 19 – Privacy

19.1 Insofar as with the use of the Web Application or Orange Pear Portal personal data are processed, this is done at the full responsibility of the Customer (as determined in the applicable laws on the protection of personal data). The Customer guarantees that it will process the personal data in accordance with the law. The Supplier will only process the personal data by Customer's instruction and in accordance with Customer's instructions, including the provisions in the Orange Pear Agreement.

19.2 The Customer indemnifies the Supplier against any and all third-party claims relating to the Orange Pear Agreement between the Supplier and the Customer and/ or the data processed by the Customer in the scope of the Orange Pear Agreement as a result of an infringement of [Dutch] Personal Data Protection Act and/or other legislation related to the protection of personal data that is not attributable to the Supplier.

19.3 Supplier may outsource parts of work regarding personal data to a third party with due observance of article 25.1 in which Supplier will remain responsible for the compliance with the Orange Pear Agreement. Supplier will ensure that the third party will maintain confidentiality regarding the personal data and will comply with the necessary instructions and security measures as determined in the Orange Pear Agreement and these Orange Pear Terms and Conditions.

## Article 20 – Confidentiality

20.1 Neither party will disclose Confidential Information about the other party or use such information for anything other than the purpose besides for which the Confidential Information was obtained.

20.2 Both parties will take all reasonable precautions to ensure they comply with their confidentiality obligations. None of the provisions in this article imposes any restrictions on the receiving party in respect of information or data – either the same or similar to the information or data contained in the Confidential Information or otherwise – when that information or data:

(I) was already legal property of the receiving party before it was obtained from the party in question;

(II) was developed independently by the receiving party without using information or data from the party in question;

(III) is or will become generally known or accessible, other than by an act or omission on the part of the receiving party; or

(IV) is disclosed to the receiving party by a third party, without a confidentiality obligation towards the party in question being breached.

20.3 The confidentiality obligations pursuant to this article do not apply if the other party's Confidential Information must be made public pursuant to the law, an ordinance, a court order or a decision by another government agency, on the condition that the receiving party makes every effort to limit the scope of the publication and notifies the party concerned in advance of such an intended publication.

20.4 The parties guarantee that their Employees and third parties engaged by the parties will comply with the confidentiality obligations described in this Article.

#### **Article 21 - (delivery)Periods**

21.1 The Supplier sets all the (delivery) periods to the best of its knowledge and complies with these periods as much as possible. As soon as the Supplier becomes aware of any circumstance that may prevent timely delivery, the Supplier with consult with the Customer about a new (delivery) period. The Customer is never entitled to compensation in respect of a late delivery. The Supplier is always entitled to make partial deliveries.

#### **Article 22 - Exclusion/disclaimer**

22.1 With the exception of provisions that have been expressly included in the Orange Pear Agreement the Supplier does not make any other or further guarantees, promises or conditions in respect of the Orange Pear Services supplied to the Customer. The Supplier hereby rejects all other guarantees, promises or conditions, either explicit, implicit or pursuant to the law (including but not limited to guarantees or conditions relating to salability, non-infringement or other rights or suitability for a specific purpose) in respect of the Orange Pear Services.

22.2 Some countries and/or states and jurisdictions do not allow the exclusion of implied warranties as described in article 22.1; thus, the above exclusion may not apply to all Customers. In that case the minimum warranties as prescribed by the applicable law apply.

#### **Article 23 - Force majeure**

23.1 Neither party is obliged to comply with a contractual obligation resulting from the Orange Pear Agreement or the Orange Pear Terms and Conditions, with the exception of payment obligations, if such compliance is prevented by a situation of force majeure. Force majeure includes but is not limited to: military actions, government actions, the elements, unavailability of or disruptions in telecommunication and internet connections, delays or inadequacies in the compliance with obligations on the part of suppliers of the Supplier, transport problems and strikes.

23.2 If, at the time the force majeure occurs, the Supplier has already partially met its obligations, or can only partially meet its obligations, the Supplier is entitled to invoice the supplied performance and/or the part of the performance that can be supplied separately, and the other party or the Customer is obliged to pay this invoice as if it concerns a separate agreement.

#### **Article 24 - Real Estate Managers**

24.1 The provisions of these Orange Pear Terms and Conditions apply by analogy to Real Estate Managers. In deviation from articles 3.1 and 4.1, Real Estate Managers may also use the Web Application for their clients' benefit. For this purpose the Real Estate Manager can order for its clients a specific user account, which specific user account will enable the clients of the Real Estate Manager to perform certain actions in connection to their own Portfolio(s) at the Real Estate Manager themselves.

24.2 At the Supplier's request, the Real Estate Manager will demonstrate that it is complying with the requirements stated by the Supplier for Real Estate Managers. The Supplier will have complete discretion in determining whether the Real Estate Manager is complying with these requirements and whether the Real Estate Manager can take advantage of certain beneficial arrangements

24.3 The Real Estate Manager ensures that it has the permission of its clients to use their personal data in the Web Application (as determined by the relevant personal data protection legislation), before entering the Portfolios and using this data in the Web Application and (when relevant) is permitted to conclude an Orange Pear Agreement with Supplier on behalf of its customers.

24.4 The Real Estate Manager indemnifies Supplier against any and all claims of third parties in connection with the Orange Pear Agreement between Supplier and the Real Estate Manager and/or with regard to a violation of any legislation regarding the use of personal data because of the personal data used by Real Estate Manager in connection with the Orange Pear Agreement.

#### **Article 25 - Data customer**

25.1 The Customer authorises the Supplier to use the data of the Customer for marketing related purposes by Orange Pear or any of its affiliates and for the purposes described in article 25.2 of these Orange Pear Terms and Conditions

25.2 Supplier is also entitled to use the data that Customer enters in the Web Application, with the exception of data protected by personal data protection legislation, for external analysis purposes, during which this data will be made anonymous.

25.3 All communication between Supplier and Customer will be through the Web Application, unless stipulated otherwise in these Orange Pear Terms and Conditions, the Orange Pear Agreement, or the law. Such communication also includes direct emails. Customer explicitly authorises Supplier to use the electronic contacts (email addresses) that Customer provides to Supplier, for commercial, non-commercial and charity communication with regard to related products and/or services of the Supplier. Customer acknowledges that it was provided with a clear and explicit opportunity to freely and easily oppose to the electronic communication as described in this article 25.3 of the Orange Pear Terms and Conditions.

#### **Article 26 - Miscellaneous**

26.1 The Supplier is entitled to transfer or outsource his rights or obligations pursuant to the Agreement to a subsidiary or to another third party the Supplier has contracted for this purpose. In the event of such transfer or outsourcing, these Orange Pear General Terms and Conditions continue to apply to the (Orange Pear Agreement with the) Customer.

26.2 All notifications or other communications relating to the Orange Pear Agreement or Orange Pear Terms and Conditions must be made through the Web Application or electronically (email) to the other party's address as stated in the Orange Pear Agreement.

26.3 If any provision in the Orange Pear Agreement or these Orange Pear Terms and Conditions is completely or partly void, voidable or conflicts with any law, it is deemed to be isolated and not applicable. In such a case the parties will consult with each other in order to replace the provision in question by a provision with a similar purport that is not completely or partly void, voidable or in conflict with any law. The other provisions of the Orange Pear Agreement or these Orange Pear Terms and Conditions remain in full force.

26.4 Delays or omissions on the part of the Supplier in respect of enforcing any rights against the Customer which the Supplier has under the Orange Pear Agreement or Orange Pear Terms and Conditions never constitutes a waiver of the right. If a party waives any right it has under the Orange Pear Agreement or Orange Pear Terms and Conditions, this does not mean that the party will or can be obliged to waive this right or any other rights in a subsequent matter.

26.5 The Orange Pear Agreement and Orange Pear Terms and Conditions fully reflect everything that has been agreed between the parties regarding the Orange Pear Services, and replace all earlier and concurrent, explicit or implicit, agreements, contracts, declarations and guarantees, both written and verbal. Subject to the provisions in Articles 2.2 and 6.2, the Orange Pear Agreement can only be amended by means of a written agreement signed by both the Customer and Supplier.

26.6 Unless expressly accepted by the Supplier, the applicability of all or part of any purchase- or other general terms and conditions of the Customer is hereby expressly rejected.

26.7 The version of the communication in question saved by the Supplier will be considered as proof thereof, subject to proof to the contrary by the Customer.

26.8 Electronic communications shall be deemed to have been received on the day they are sent, unless the recipient proves otherwise. If the communication is not received because of delivery and/or accessibility problems regarding the Customer's email box, the Customer shall bear the risk of this, even if the email box is located at a third party.

#### **Article 27 - Applicable law and disputes**

27.1 The Agreement, including these General Terms and Conditions, are governed by Dutch law only. The provisions of the Vienna Sales Convention (CISG) do not apply. However if the Orange Pear Agreement was concluded by and the Orange Pear Services were supplied to a Customer established outside the Netherlands, and if local law prohibits the use of Dutch law, local law may apply (This will only be the case where Dutch law is invalid).

27.2 Any and all disputes, disagreements or claims resulting from or associated with the Orange Pear Agreement and/or the Orange Pear Terms and Conditions, or with the non-compliance, termination or invalidity thereof shall be submitted to the competent court in Amsterdam.

However if the Orange Pear Agreement was concluded by and the Orange Pear Services were supplied to a Customer established outside the Netherlands and this clause is not valid under local law, any dispute, disagreement or claim arising out of or relating to the Orange Pear Agreement, or the breach, termination or invalidity thereof, shall be submitted to the adjudication of the competent court in the capital of the country where the Orange Pear Agreement was concluded by and the Orange Pear Services were supplied to Customer.